

By: Schwertner

S.B. No. 404

A BILL TO BE ENTITLED

AN ACT

relating to complaints filed with the Texas State Board of Pharmacy; authorizing fees.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 555.005, Occupations Code, is amended to read as follows:

Sec. 555.005. RECORDS OF COMPLAINTS. For each complaint received by the board, the board shall maintain information about parties to the complaint, including the complainant's identity, the subject matter of the complaint, a summary of the results of the review or investigation of the complaint, and the [its] disposition of the complaint.

SECTION 2. Section 555.007, Occupations Code, is amended by adding Subsection (d) to read as follows:

(d) The board may not consider or act on a complaint involving a violation alleged to have occurred more than seven years before the date the complaint is received by the board.

SECTION 3. Section 565.051, Occupations Code, is amended to read as follows:

Sec. 565.051. DISCIPLINE AUTHORIZED. On a determination that a ground for discipline exists under Subchapter A, or that a violation of this subtitle or a rule adopted under this subtitle has been committed by a license holder or applicant for a license or renewal of a license, the board may:

- 1 (1) suspend the person's license;
- 2 (2) revoke the person's license;
- 3 (3) restrict the person's license to prohibit the
4 person from performing certain acts or from practicing pharmacy or
5 operating a pharmacy in a particular manner for a term and under
6 conditions determined by the board;
- 7 (4) impose an administrative penalty under Chapter
8 566;
- 9 (5) refuse to issue or renew the person's license;
- 10 (6) place the offender's license on probation and
11 supervision by the board for a period determined by the board and
12 impose a requirement that the license holder:
 - 13 (A) report regularly to the board on matters that
14 are the basis of the probation;
 - 15 (B) limit practice to the areas prescribed by the
16 board;
 - 17 (C) continue or review professional education
18 until the license holder attains a degree of skill satisfactory to
19 the board in each area that is the basis of the probation; or
 - 20 (D) pay the board a probation fee to defray the
21 costs of monitoring the license holder during the period of
22 probation;
- 23 (7) reprimand the person;
- 24 (8) retire the person's license as provided by board
25 rule; ~~or~~
- 26 (9) issue a remedial plan; or
- 27 (10) impose more than one of the sanctions listed in

1 this section [~~subsection~~].

2 SECTION 4. Section 565.056, Occupations Code, is amended by
3 amending Subsection (b) and adding Subsections (d) and (e) to read
4 as follows:

5 (b) A rule adopted under this section must:

6 (1) provide the complainant, if applicable and
7 permitted by law, and the license holder an opportunity to be heard;
8 [~~and~~]

9 (2) require the presence of an attorney to advise the
10 board or a board employee; and

11 (3) if an informal meeting will be held, require
12 notice of the time and place of the informal meeting to be given to
13 the license holder not later than the 45th day before the date the
14 informal meeting is held.

15 (d) The notice required by Subsection (b)(3) must be
16 accompanied by a written statement of the nature of the allegations
17 against the license holder and the information the board intends to
18 use at the informal meeting. If the board does not provide the
19 statement or information when the notice is provided, the license
20 holder may use that failure as grounds for rescheduling the
21 informal meeting. The license holder must provide to the board the
22 license holder's rebuttal not later than the 15th day before the
23 date of the meeting in order for that information to be considered
24 at the meeting.

25 (e) On request by a license holder under review, the board
26 shall make a recording of the informal meeting. The recording is a
27 part of the investigative file and may not be released to a third

1 party unless authorized under this subtitle. The board may charge
2 the license holder a fee to cover the cost of recording the meeting.
3 The board shall provide a copy of the recording to the license
4 holder on the license holder's request.

5 SECTION 5. Subchapter B, Chapter 565, Occupations Code, is
6 amended by adding Section 565.060 to read as follows:

7 Sec. 565.060. REMEDIAL PLAN. (a) The board may issue and
8 establish the terms of a remedial plan to resolve the investigation
9 of a complaint relating to this subtitle.

10 (b) A remedial plan may not contain a provision that:

11 (1) revokes, suspends, limits, or restricts a person's
12 license or other authorization to practice pharmacy; or

13 (2) assesses an administrative penalty against a
14 person.

15 (c) A remedial plan may not be imposed to resolve a
16 complaint:

17 (1) concerning:

18 (A) a death;

19 (B) a hospitalization; or

20 (C) the commission of a felony; or

21 (2) in which the appropriate resolution may involve a
22 restriction on the manner in which a license holder practices
23 pharmacy.

24 (d) The board may not issue a remedial plan to resolve a
25 complaint against a license holder if the license holder has
26 entered into a remedial plan with the board in the preceding 24
27 months for the resolution of a different complaint relating to this

1 subtitle.

2 (e) If a license holder complies with and successfully
3 completes the terms of a remedial plan, the board shall remove all
4 records of the remedial plan from the board's records on the second
5 anniversary of the date the license holder successfully completes
6 the remedial plan.

7 (f) The board may assess a fee against a license holder
8 participating in a remedial plan in an amount necessary to recover
9 the costs of administering the plan.

10 (g) The board shall adopt rules necessary to implement this
11 section.

12 SECTION 6. Section 565.061, Occupations Code, is amended by
13 amending Subsection (a) and adding Subsections (a-1) and (a-2) to
14 read as follows:

15 (a) Except as provided by this section and Chapter 564, a
16 disciplinary action taken by the board [~~under Section 565.060 or~~]
17 on the basis of a ground for discipline under Subchapter A is
18 governed by Chapter 2001, Government Code, and the rules of
19 practice and procedure before the board.

20 (a-1) After receiving the administrative law judge's
21 findings of fact and conclusions of law, the board shall dispose of
22 the contested case by issuing a final order based on the
23 administrative law judge's findings of fact and conclusions of law.

24 (a-2) Notwithstanding Section 2001.058(e), Government
25 Code, the board may not change a finding of fact or conclusion of
26 law or vacate or modify an order of the administrative law judge.
27 The board may obtain judicial review of any finding of fact or

1 conclusion of law issued by the administrative law judge as
2 provided by Section 2001.058(f)(5), Government Code. For each
3 case, the board has the sole authority and discretion to determine
4 the appropriate action or sanction, and the administrative law
5 judge may not make any recommendation regarding the appropriate
6 action or sanction.

7 SECTION 7. (a) Sections 555.005 and 565.056, Occupations
8 Code, as amended by this Act, and Section 555.007(d), Occupations
9 Code, as added by this Act, apply only to the investigation of a
10 complaint filed on or after the effective date of this Act. The
11 investigation of a complaint filed before that date is governed by
12 the law in effect on the date the complaint was filed, and that law
13 is continued in effect for that purpose.

14 (b) The Texas State Board of Pharmacy shall adopt rules
15 under Section 565.060, Occupations Code, as added by this Act, not
16 later than January 1, 2014.

17 (c) Section 565.051, Occupations Code, as amended by this
18 Act, and Section 565.060, Occupations Code, as added by this Act,
19 apply only to a complaint under Subtitle J, Title 3, Occupations
20 Code, filed on or after the effective date of this Act. A complaint
21 under Subtitle J, Title 3, Occupations Code, filed before that date
22 is governed by the law in effect on the date the complaint was
23 filed, and that law is continued in effect for that purpose.

24 (d) Section 565.061, Occupations Code, as amended by this
25 Act, applies only to a contested case for which an administrative
26 law judge employed by the State Office of Administrative Hearings
27 issues written findings of fact and conclusions of law on or after

1 the effective date of this Act. A contested case for which an
2 administrative law judge employed by the State Office of
3 Administrative Hearings issues written findings of fact and
4 conclusions of law before the effective date of this Act is governed
5 by the law in effect on the date the findings of fact and
6 conclusions of law were issued, and the former law is continued in
7 effect for that purpose.

8 SECTION 8. This Act takes effect September 1, 2013.